



COMMONWEALTH of VIRGINIA
Office of the Attorney General
Richmond 23219

Jerry W. Kilgore
Attorney General

900 East Main Street
Richmond, Virginia 23219
804-786-2071
804-371-8947 TDD

June 13, 2003

W. Curtis Coleburn, III, Chief Operating Officer
Alcoholic Beverage Control Board
2901 Hermitage Road
Richmond, Virginia 23261

Re: *Letter of May 29, 2003, and*
Proposed Regulations for Wine and Beer Shippers' Licenses

Dear Mr. Coleburn:

In response to your letter, we have reviewed the proposed regulations to be promulgated, pursuant to the second enactment clauses of Chapters 1029 and 1030 of the Acts of Assembly.

We advise that Section 2.2-4011 (A) of the 1950 Code of Virginia, as amended, governs how regulations can be promulgated in an emergency situation. The second enactment clauses of House Bill 1652 and Senate Bill 1117, approved by the Governor on April 9, 2003, require the Alcoholic Beverage Control Board to promulgate regulations to implement the provisions of the act to be effective within 90 days of the legislation's enactment --- or within 90 days of April 9, 2003. Because the Board is required to promulgate regulations which are to be effective in 280 days, or less, from the statute's enactment, and the regulations are not exempt under Section 2.2-4006 (A)(4), an emergency, as defined under the Administrative Process Act, exists.

The Virginia Alcoholic Beverage Control Board is authorized to promulgate these regulations. Section 4.1-103(13) of the 1950 Code of Virginia, as amended, establishes that the Virginia Alcoholic Beverage Control Board has the power to promulgate regulations pursuant to the Administrative Process Act and Section 4.1-111. Section 4.1-111(A) provides that the Board may promulgate any regulations necessary to carry out the provisions of Title 4.1. Section 4.1-111(F) states that the power is to be broadly construed. Thus, the Board has the authority to promulgate regulations implementing the licensing of those shipping beer and/or wine directly to consumers.

We also find that the proposed regulations are consistent with the statutory grant of authority to promulgate them, are consistent with the statute, and are internally consistent. The proposed regulations do not appear to run afoul of state or federal statutes. We find the proposed regulations have no Constitutional defect distinct from the enabling statute.

Thank you for your time and kind assistance with this matter. Please do not hesitate to call me at (804) 225-3194 if you have any questions in this regard.

Sincerely,

Carla R. Collins,
Assistant Attorney General